



January 18, 2001

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2001-0181

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143313.

The Texas Department of Public Safety, (the “department”), received a request for all information pertaining to a specific arrest, and the personnel file of a specific officer. Although you make no mention of the requested personnel file, you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note the fact that you have raised no arguments regarding the requested personnel file nor submitted any personnel file information. Because the department has not submitted information responsive to this request item, we have no basis for finding such information confidential. Thus, we have no choice but to order release of the requested personnel file, to the extent it exists within the department’s possession, per section 552.302. If the department believes that such information is confidential and may not lawfully be released, the department must challenge this ruling in court as outlined later in this ruling.<sup>1</sup>

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<sup>1</sup>In its letter to the requestor dated November 8, 2000, the department states that it is prepared to release a redacted version of the requested personnel file. We note that the only information that the department may unilaterally withhold without asking for an attorney general decision is information that falls under section 552.117(2) of the Government Code.

We turn now to the submitted information regarding the specified arrest. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a), (b), .301(e); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the submitted offense report pertains to a pending criminal investigation. Based on this representation, we find that release of the submitted report would interfere with an ongoing criminal case, and therefore, the submitted report is subject to section 552.108(a)(1).

However, information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the department must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the submitted report. Although section 552.108(a)(1) authorizes the department to withhold the remaining information from disclosure, you may choose to release all or part of the report that is not otherwise confidential by law. *See* Gov’t Code § 552.007.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>2</sup>Because section 552.108 is dispositive of this matter, we do not address your argument regarding section 552.103 except to note that, like section 552.108, section 552.103 does not except front page offense report information. *See* Open Records Decision Nos. 362 (1983), 597 (1991).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/er

Ref: ID# 143313

Encl: Submitted documents

cc: Mr. Donald H. Brandt, Jr.  
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(w/o enclosures)